

1 CLYDE & CO US LLP
2 Alison K. Beanum, State
3 Bar No. 221968
4 *alison.beanum@clydeco.us*
5 Veena A. Mitchell, State
6 Bar No. 161153
7 *veena.mitchell@clydeco.us*
8 Kirsten Soto, State Bar No.
9 332821
10 *kirsten.soto@clydeco.us*
11 355 S. Grand Avenue, 14th
12 Floor
13 Los Angeles, CA 90071
14 Telephone: (213) 358-
15 7600
16 Facsimile: (213) 358-7650

17 Attorneys for Defendant
18 TREND HUNTER INC.

John Tehranian (Bar No. 211616)
Email: *jtehranian@onellp.com*
Christopher S. Skinner (Bar No.
342830)
Email: *cskinner@onellp.com*
ONE LLP
23 Corporate Plaza Drive
Suite 150
Newport Beach, CA 92660
Telephone: (949) 502-2870
Facsimile: (949) 258-5081

Attorneys for Plaintiff,
AUGUST Image, LLC

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
14

15 AUGUST IMAGE, LLC, a New York
16 limited liability company,

17 Plaintiff,

18 v.

19 TREND HUNTER INC., a Canadian
20 corporation; and DOES 1-10, inclusive,

21 Defendants.

Case No. 2:22-cv-07120-DMG-MAA

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

Complaint filed: September 30, 2022

22 IT IS HEREBY STIPULATED pursuant to Fed. R. Civ. P. 26(c) by and
23 between Plaintiff August Image, LLC (“Plaintiff”) and Defendant Trend Hunter Inc.
24 (“Defendant”) (individually, a “Party,” or collectively, “Parties”) that a Protective
25 Order (“Order” or “Stipulated Protective Order”) may be entered by the Court in
26 this action as follows:

27 ///

28 ///

1 **1. PURPOSES AND LIMITATIONS**

2 The Parties acknowledge that discovery in this action is likely to involve
3 production of confidential, proprietary, trade secret, personal, or private information
4 for which special protection from public disclosure and from use for any purpose
5 other than prosecuting and defending this action is warranted. Accordingly, the
6 Parties hereby stipulate to and petition the Court to enter the following Stipulated
7 Protective Order pursuant to Fed. R. Civ. P. 26(c), Civil Local Rule 79-5, and all
8 other applicable local laws and rules. The Parties seek to facilitate the orderly and
9 efficient disclosure of relevant information, and to minimize the potential for
10 unauthorized disclosure of confidential information. The Parties acknowledge that
11 this Stipulated Protective Order does not confer blanket protections on all disclosures
12 or responses to discovery and that the protection it affords from public disclosure and
13 use extends only to the limited information or items that are entitled to confidential
14 treatment under the applicable legal principles. The Parties further acknowledge, as
15 set forth in Section 13.3 below, that this Stipulated Protective Order does not entitle
16 them to file confidential information under seal;
17 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
18 standards that will be applied when a party seeks permission from the Court to file
19 material under seal

20 **2. GOOD CAUSE STATEMENT**

21 Counsel for Plaintiff and Defendant have conferred on the issue of disclosure
22 of certain information relevant to the claims and defenses in this action. The Parties
23 agree that both sides will likely propound, and have propounded discovery seeking
24 information and documents related to involve trade secrets, customer and pricing
25 lists and other valuable research, development, commercial, financial, technical,
26 personal, private, and/or proprietary information belonging to the Parties or non-
27 parties to this action for which special protection from public disclosure and from use
28 for any purpose other than prosecution, defense, or resolution of this action is

1 warranted. Such confidential and proprietary materials and information may consist
2 of, without limitation, trade secrets, confidential business or financial information,
3 information regarding confidential business practices, or other confidential research,
4 development, or commercial information (including information implicating privacy
5 rights of third parties), information otherwise generally unavailable to the public, or
6 which may be privileged or otherwise protected from disclosure under state or
7 federal statutes, court rules, case decisions, or common law.

8 Accordingly, to expedite the flow of information, to facilitate the prompt
9 resolution of disputes over the confidentiality of discovery materials, to adequately
10 protect information the Parties are entitled to keep confidential, to ensure that the
11 Parties are permitted reasonable necessary uses of such material in preparation for
12 and in the conduct of trial, to address their handling at the end of litigation, and to
13 serve the ends of justice, a protective order for such information is justified in this
14 matter. It is the intent of the parties that information will not be designated as
15 confidential for tactical reasons and that nothing be so designated without a good
16 faith belief that it has been maintained in a confidential, non-public manner, and
17 there is good cause why it should not be part of the public record of this case.

18 **3. DEFINITIONS**

19 3.1. Action: The above-titled lawsuit pending in the United States District
20 Court in the Central District of California, Case No. 2:22-cv-07120.

21 3.2. Challenging Party: A Party or Nonparty that challenges the
22 designation of information or items under this Stipulated Protective
23 Order.

24 3.3. "CONFIDENTIAL" Information or Items: Information (regardless of
25 how it is generated, stored or maintained) or tangible things that qualify
26 for protection under Federal Rule of Civil Procedure 26(c), and as
27 specified above in the Good Cause Statement.
28

1 3.4. Counsel: Outside Counsel of Record and In-House Counsel (as well as
2 their support staff).

3 3.5. Designating Party: A Party or Nonparty that designates information or
4 items that are or have been exchanged or produced in disclosures or in
5 responses to discovery, or otherwise, as “CONFIDENTIAL” or
6 “HIGHLY COFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 3.6. Disclosure or Discovery Material: All items or information, regardless of
8 the medium or manner in which it is generated, stored, or maintained
9 (including, among other things, testimony, transcripts, or tangible
10 things), that is produced or generated in disclosures or responses to
11 discovery in this matter, other requests for documentation, or other
12 exchanges or submissions in this action.

13 3.7. Expert: A person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its
15 counsel to serve as an expert witness or as a consultant in this Action.
16 This definition includes any professional jury or trial consultant
17 retained in connection with this litigation. An expert for purposes of
18 this Stipulated Protective Order shall not include anyone who is a
19 current employee of an opposing Party.

20 3.8. HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY: Extremely
21 sensitive confidential documents and/or communications, disclosure of which
22 to another Party or Non-Party would create a substantial risk of serious harm
23 that could not be avoided by less restrictive means.

24 3.9. In-House Counsel: Attorneys who are employees of a party to this
25 Action. In-House Counsel does not include Outside Counsel of
26 Record or any other outside counsel.

27 3.10. Nonparty: Any natural person, partnership, corporation, association,
28 or other legal entity not named as a Party to this action.

1 3.11. Outside Counsel of Record: Attorneys who are not employees of a
 2 Party to this Action but are retained to represent or advise a Party to this
 3 Action and have appeared in this Action on behalf of that Party or are
 4 affiliated with a law firm which has appeared on behalf of that Party,
 5 and includes support staff (this also includes independent companies or
 6 agencies that Outside Counsel of Record directly retains on behalf of a
 7 Party to perform litigation support services, including for example
 8 stenographic or videographic services).

9 3.12. Party: Any Party to this Action (including any Party(ies) added after the
 10 date of this Stipulated Protective Order or its entry by the Court),
 11 including all of its officers, directors, employees, consultants, retained
 12 experts, In-House Counsel, and Outside Counsel of Record (and their
 13 support staffs).

14 3.13. Producing Party: A Party or Nonparty that produces Disclosure or
 15 Discovery Material in this Action.

16 3.14. Professional Vendors: Persons or entities that provide litigation
 17 support services (e.g., photocopying, videotaping, translating,
 18 preparing exhibits or demonstrations, and organizing, storing, or
 19 retrieving data in any form or medium) and their employees and
 20 subcontractors.

21 3.15. Protected Material: Any Disclosure or Discovery Material that is
 22 designated as “CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

24 3.16. Receiving Party: A Party that receives Disclosure or Discovery
 25 Material from a Producing Party.

26 **4. SCOPE**

27 The protections conferred by this Stipulated Protective Order cover not only
 28 Protected Material, but also (1) any information copied or extracted from Protected

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
2 and (3) any testimony, conversations, or presentations by Parties or their Counsel
3 that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the
5 trial judge. Nothing in this Order shall be construed to require disclosure of
6 documents, information, or any materials that are subject to applicable privileges
7 or immunities that are, or may claim to be, otherwise beyond the scope of
8 permissible discovery. Nothing herein shall be construed as an admission by any
9 Party that any Protected Material constitutes relevant, material, or admissible
10 evidence in this Action. This Stipulated Protective Order does not govern the use
11 of Protected Material at trial.

12 **4. DURATION**

13 Even after final disposition of this Action, the confidentiality obligations
14 imposed by this Stipulated Protective Order shall remain in effect until a
15 Designating Party agrees otherwise in writing or a court order otherwise directs.
16 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
17 defenses in this Action, with or without prejudice; and (2) final judgment herein
18 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
19 reviews of this Action, including the time limits for filing any motions or
20 applications for extension of time pursuant to applicable law.

21 **6. DESIGNATING PROTECTED MATERIAL**

22 **6.1. Exercise of Restraint and Care in Designating Material for Protection.**

23 Each Party or Nonparty that designates information or items for
24 protection under this Stipulated Protective Order must take care to
25 limit any such designation to specific material that qualifies under the
26 appropriate standards. The Designating Party must designate for
27 protection only those parts of material, documents, items, or oral or
28 written communications that qualify so that other portions of the

1 material, documents, items, or communications for which protection is
2 not warranted are not swept unjustifiably within the ambit of this
3 Stipulated Protective Order.

4 Mass, indiscriminate, or routinized designations are prohibited.
5 Designations that are shown to be clearly unjustified or that have been
6 made for an improper purpose (*e.g.*, to unnecessarily encumber the
7 case development process or to impose unnecessary expenses and
8 burdens on other parties) may expose the Designating Party to
9 sanctions.

10 6.2. Manner and Timing of Designations.

11 Except as otherwise provided in this Stipulated Protective Order
12 (*see, e.g.*, Section 6.2(a)), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this
14 Stipulated Protective Order must be clearly so designated before the
15 material is disclosed or produced.

16 Designation in conformity with this Stipulated Protective Order
17 requires the following:

18 (a) For information in documentary form (*e.g.*, paper or electronic
19 documents, but excluding transcripts of depositions or other
20 pretrial or trial proceedings),

21 (i) Documents Produced in Image, PDF, or hardcopy
22 form (“Image”). The Designating Party shall place on
23 each page one of the following legends:

24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.” The legend shall not
26 obscure any content of the original document. Any
27 person making a copy of the image, if authorized under
28

1 this Order, shall ensure that the same legend shows on the
2 copy.

3 (ii) Documents Produced in Native Format (“native
4 file”). A Designating Party shall rename each native file
5 to include, at the end of the file name and prior to the file
6 extension, the following language: “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY.” Any person making any copy of the native file,
9 if authorized under this Order, shall not rename the file to
10 remove the confidentiality legend.

11 (b) For testimony given in depositions or other pre-trial proceedings,
12 the Designating Party may designate protected information
13 disclosed on the record, including testimony and exhibits, as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” and request the preparation of a
16 separate transcript of such material. Such separate transcript shall
17 include both deposition testimony and exhibits so designated. In
18 addition, deposition transcripts (including rough transcripts) and
19 exhibits shall be deemed CONFIDENTIAL for thirty (30) days
20 after the Parties’ receipt of the final transcript from the court
21 reporter (for avoidance of doubt, “final transcript” as used herein
22 does not mean the “certified” transcript after the witness has had
23 the opportunity to provide his or her errata). A Designating Party
24 may designate in writing, within thirty (30) days after receipt of
25 any final deposition transcript in the Action, the specific pages of
26 the transcript and exhibits to be treated as “CONFIDENTIAL” or
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
28 The Designating Party shall then be responsible to notify the

1 Court Reporter, and the Court Reporter shall provide a separate
 2 transcript which shall include both deposition testimony and
 3 exhibits so designated.

4 Unless otherwise agreed by the Parties and any Non-Party
 5 making a pertinent designation under this Order, transcript pages
 6 containing Protected Material must be separately bound by the
 7 court reporter, who must affix to the top of each such page the
 8 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 9 ATTORNEYS’ EYES ONLY,” as instructed by the Party
 10 offering or sponsoring the witness or presenting the testimony.

11 (c) For information contained in responses to written discovery, the
 12 Designating Party may designate information exchanged in
 13 disclosures or in response(s) to written discovery requests
 14 (including subpoenas) as “CONFIDENTIAL” or “HIGHLY
 15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by so
 16 indicating in a prominent manner (i) on the caption page of said
 17 responses (identifying specific responses being so designated),
 18 (ii) on each page of any documents produced with such
 19 responses, and/or (iii) as otherwise provided in Paragraph 5.2
 20 above. In addition, a Designating Party may designate in
 21 writing, within thirty (30) days after receipt of a Non-Party’s
 22 responses to written discovery requests, the specific responses,
 23 documents, and/or other information to be treated as
 24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 25 ATTORNEYS’ EYES ONLY.”

26 6.3. Protected Material Disclosed by a Non-Party

27 After a Non-Party makes disclosures in this proceeding, the entire
 28 disclosure shall be treated under this Order as Protected Material for

1 the first 14 days immediately after the disclosure. Within that 14-
2 day period, the Non-Party or a Party in this action may notify all
3 other Parties that all or specific portions of the disclosure is being
4 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY.” Thereafter, any portions so
6 designated, as well as any documents or information designated as
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” at the time of production or during
9 the 14-day period after production, shall remain so designated
10 subject to this Order.

11 In addition, in the event that the timing of a Non-Party’s
12 disclosure(s) is such that the restrictions during the initial 14-day
13 time period may prevent a Party from adequately preparing for any
14 filing, proceeding, or other formal obligation in this matter
15 (including, without limitation, a deposition or other discovery
16 proceeding), the Parties will meet and confer in good faith to
17 provide additional time for the affected Party as needed to avoid any
18 potential prejudice from the initial 14-day period after a Non-Party’s
19 disclosure.

20 6.4. Inadvertent Failure to Designate.

21 If timely corrected, an inadvertent failure to designate qualified
22 information or items does not, standing alone, waive the Designating
23 Party’s right to secure protection under this Stipulated Protective Order
24 for such material. Upon timely correction of a missing or incorrect
25 designation, the Receiving Party, on notification of designation, must
26 make reasonable efforts to assure that the material is treated in
27 accordance with the provisions of this Stipulated Protective Order.
28 This provision shall not be construed to be a derogation of the

obligations or protections under Federal Rule of Civil Procedure 26(b)(5) nor Federal Rule of Evidence 502.

7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7.1. Timing of Challenges.

Any Party or Nonparty may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

7.2. Meet and Confer.

The Challenging Party shall initiate the dispute resolution process, which shall comply with Local Rule 37.1 et seq., and with Section 4 of Judge Audero's Procedures ("Mandatory Telephonic Conference for Discovery Disputes").¹

7.3. Burden of Persuasion.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

8. ACCESS TO AND USE OF PROTECTED MATERIALS

8.1. Basic Principles.

¹ Judge Audero's Procedures are available at <https://www.cacd.uscourts.gov/honorable-maria-audero>.

1 A Receiving Party may use Protected Material that is disclosed
2 or produced by another Party or by a Nonparty in connection with this
3 Action only for prosecuting, defending, or attempting to settle this
4 Action. Such Protected Material may be disclosed only to Court and its
5 employees or other staff and to the categories of persons and under the
6 conditions described in this Stipulated Protective Order. When the
7 Action reaches a final disposition, a Receiving Party must comply with
8 the provisions of Section 14 below.

9 Protected Material must be stored and maintained by a
10 Receiving Party at a location and in a secure manner that ensures that
11 access is limited to the persons authorized under this
12 Stipulated Protective Order.

13 8.2. Disclosure of “CONFIDENTIAL” Information or Items.

14 Unless otherwise ordered by the Court or permitted in writing
15 by the Designating Party, a Receiving Party may disclose any
16 information or item designated “CONFIDENTIAL” only to:

- 17 (a) The Receiving Party’s Outside Counsel of Record, as well as
18 employees of said Outside Counsel of Record to whom it is
19 reasonably necessary to disclose the information for this Action;
20 (b) The officers, directors, and employees (including In-House
21 Counsel) of the Receiving Party to whom disclosure is
22 reasonably necessary for this Action;
23 (c) Experts of the Receiving Party to whom disclosure is reasonably
24 necessary for this Action and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
26 (d) The Court and its personnel;
27 (e) Court reporters and their staff;
28

- 1 (f) Professional jury or trial consultants, mock jurors, and
 2 Professional Vendors to whom disclosure is reasonably
 3 necessary or this Action and who have signed the
 4 “Acknowledgment and Agreement to be Bound” (Exhibit A);
- 5 (g) The author or recipient of a document containing the
 6 information or a custodian or other person who otherwise
 7 possessed or knew the information;
- 8 (h) During their depositions, witnesses, and attorneys for witnesses,
 9 in the Action to whom disclosure is reasonably necessary
 10 provided: (i) the deposing party requests that the witness sign the
 11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
 12 and (ii) the witness will not be permitted to keep any
 13 confidential information unless they sign the “Acknowledgment
 14 and Agreement to Be Bound,” unless otherwise agreed by the
 15 Designating Party or ordered by the Court. Pages of transcribed
 16 deposition testimony or exhibits to depositions that reveal
 17 Protected Material may be separately bound by the court
 18 reporter and may not be disclosed to anyone except as permitted
 19 under this Stipulated Protective Order; and
- 20 (i) Any mediator or settlement officer, and their supporting personnel,
 21 mutually agreed upon by any of the parties engaged in settlement
 22 discussions.

23 8.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
 24 EYES ONLY” Information or Items.

25 (a) Unless otherwise ordered by the court or agreed to in writing by
 26 the Designating Party, a Party that seeks to disclose to Designated House
 27 Counsel any information or item that has been designated “HIGHLY
 28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph

1 7.3(b) first must make a written request to the Designating Party that (1) sets
2 forth the full name of the Designated House Counsel, and (2) describes the
3 Designated House Counsel's current and reasonably foreseeable future primary
4 job duties and responsibilities in sufficient detail to determine if Designated
5 House Counsel is involved, or may become involved, in any competitive
6 decision-making.

7 (b) Unless otherwise ordered by the court or agreed to in writing by
8 the Designating Party, a Party that seeks to disclose to an Expert (as defined in
9 this Order) any information or item that has been designated "HIGHLY
10 CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph
11 7.3(c) first must make a written request to the Designating Party that (1)
12 identifies the general categories of "HIGHLY CONFIDENTIAL –
13 ATTORNEYS' EYES ONLY" information that the Receiving Party seeks
14 permission to disclose to the Expert, (2) sets forth the full name of the Expert
15 and the city and state of his or her primary residence, (3) attaches a copy of the
16 Expert's current resume, (4) identifies the Expert's current employer(s), (5)
17 identifies each person or entity from whom the Expert has received
18 compensation or funding for work in his or her areas of expertise or to whom
19 the expert has provided professional services, including in connection with a
20 litigation, at any time during the preceding five years, and (6) identifies (by
21 name and number of the case, filing date, and location of court) any litigation
22 in connection with which the Expert has offered expert testimony, including
23 through a declaration, report, or testimony at a deposition or trial, during the
24 preceding five years.

25 (c) A Party that makes a request and provides the information
26 specified in the preceding respective paragraphs may disclose the subject
27 Protected Material to the identified Designated House Counsel or Expert
28 unless, within 5 business of delivering the request, the Party receives a written

1 objection from the Designating Party. Any such objection must set forth in
2 detail the grounds on which it is based.

3 (d) A Party that receives a timely written objection must meet and
4 confer with the Designating Party (through direct voice to voice dialogue) to
5 try to resolve the matter by agreement within two business days of the written
6 objection. If no agreement is reached, the Party seeking to make the disclosure
7 to Designated House Counsel or the Expert may file a motion as provided in
8 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
9 seeking permission from the court to do so. Any such motion must describe the
10 circumstances with specificity, set forth in detail the reasons why the disclosure
11 to Designated House Counsel or the Expert is reasonably necessary, assess the
12 risk of harm that the disclosure would entail, and suggest any additional means
13 that could be used to reduce that risk. In addition, any such motion must be
14 accompanied by a competent declaration describing the parties' efforts to
15 resolve the matter by agreement (i.e., the extent and the content of the meet and
16 confer discussions) and setting forth the reasons advanced by the Designating
17 Party for its refusal to approve the disclosure.

18 (e) In any such proceeding, the Party opposing disclosure to
19 Designated House Counsel or the Expert shall bear the burden of proving that
20 the risk of harm that the disclosure would entail (under the safeguards
21 proposed) outweighs the Receiving Party's need to disclose the Protected
22 Material to its Designated House Counsel or Expert.

23 8.4 Pleadings, Motion Papers, and Written Discovery

24 The Parties shall comply with all of the requirements contained in
25 L.R. 79-5 prior to including any material that another party has designated
26 as Protected Material in pleadings, motion papers (written motions,
27 affidavits, and briefs), written discovery papers (requests and responses), or
28 any other public documents/submissions

1 8.5. Required Handling of Protected Material

2 (a) Protected Material shall not be disclosed to anyone for any
3 purpose other than as required for the preparation of trial or any appeal or
4 resolution in this action, and, in that limited context, shall be disclosed only to
5 Qualified Persons as set out above. Protected Material shall not be used for
6 any business, personal, competitive or other purpose not strictly related to the
7 prosecution, defense, or resolution of this Action. In addition, Protected
8 Material in native format may be copied solely (a) for use in a litigation-
9 support application or (b) as mutually agreed upon by the Parties.

10 (b) Each Party and its Counsel, and each Qualified Person
11 identified in paragraph 7.3 (other than the Court), including any person or
12 entity acting on behalf of, or for the benefit of, that Qualified Person, (i) shall
13 not permit or enable unauthorized dissemination of Protected Material to
14 anyone; and (ii) shall take all necessary and prudent measures to preserve the
15 security of Protected Material, including measures to minimize risks of
16 hacking of, and other unauthorized access to, systems on which Protected
17 Material is stored or through which it is transmitted.

18 (c) If Protected Material is disclosed in a manner not
19 authorized by this Order, or if an attempt is made to hack or otherwise gain
20 unauthorized access to a system containing Protected Material (jointly,
21 “unauthorized actions”), each Party or Qualified Person with knowledge of
22 the unauthorized actions immediately shall take necessary and prudent
23 remedial measures to prevent their reoccurrence and promptly shall inform
24 the Designating Party of such remedial measures and of all facts relating to
25 the unauthorized actions, including identification of all Protected Material
26 disclosed.

27 (d) Nothing in this Order shall limit any Designating Party’s
28 use of its own documents and information, including disclosure of its own

Protected Material, to any person for any purpose, in this action or otherwise. Such disclosure shall not affect any designations made pursuant to the terms of this Order so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the information.

**9. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Receiving Party is served with a subpoena or a court order issued in other litigation that would compel disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Receiving Party must:

- (a) Promptly notify in writing the Designating Party (via email and USPS First Class Mail). Such notification shall include a copy of the subpoena or court order, the identification of the Protected Material(s) which the Receiving Party believes to be implicated by the subpoena or order, and identification of the basis or bases by which the Receiving Party believes that the identified Protected Material(s) is subject to disclosure;
- (b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- (c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” before a determination by the Court from which the subpoena or
 2 order issued, unless the Party has obtained the Designating Party’s permission. The
 3 Designating Party shall bear the burden and expense of seeking protection in that
 4 court of its confidential material and nothing in these provisions should be construed
 5 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
 6 directive from another court.

7 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 8 **PRODUCED IN THIS LITIGATION**

9 10.1. Application.

10 The terms of this Stipulated Protective Order are applicable to
 11 information produced by a Nonparty in this Action and designated as
 12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 13 EYES ONLY.” Such information produced by Nonparties in
 14 connection with this litigation is protected by the remedies and relief
 15 provided by this Stipulated Protective Order. Nothing in these
 16 provisions should be construed as prohibiting a Nonparty from seeking
 17 additional protections.

18 10.2. Notification.

19 In the event that a Party is required, by a valid discovery
 20 request, to produce a Nonparty’s confidential information in its
 21 possession, and the Party is subject to an agreement with the Nonparty
 22 not to produce the Nonparty’s confidential information, then the Party
 23 shall:

- 24 (a) Promptly notify in writing the Requesting Party and the
 25 Nonparty that some or all of the information requested is subject
 26 to a confidentiality agreement with a Nonparty;
 27 (b) Promptly provide the Nonparty with a copy of the Stipulated
 28 Protective Order in this Action, the relevant discovery request(s),

1 and a reasonably specific description of the information
 2 requested; and

3 (c) Make the information requested available for inspection by the
 4 Nonparty, if requested.

5 10.3. Conditions of Production.

6 If the Nonparty fails to seek a protective order from this Court
 7 within fourteen (14) days after receiving the notice and accompanying
 8 information, the Receiving Party may produce the Nonparty's
 9 confidential information responsive to the discovery request. If the
 10 Nonparty timely seeks a protective order, the Receiving Party shall
 11 not produce any information in its possession or control that is subject
 12 to the confidentiality agreement with the Nonparty before a
 13 determination by the Court. Absent a court order to the contrary, the
 14 Nonparty shall bear the burden and expense of seeking protection in
 15 this Court of its Protected Material.

16 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 18 Protected Material to any person or in any circumstance not authorized under this
 19 Stipulated Protective Order, the Receiving Party immediately must (1) notify in
 20 writing the Designating Party of the unauthorized disclosures, (2) use its best efforts
 21 to retrieve all unauthorized copies of the Protected Material, (3) inform the person or
 22 persons to whom unauthorized disclosures were made of all the terms of this
 23 Stipulated Protective Order, and (4) request such person or persons return and/or
 24 destroy **all** copies of all materials so disclosed and certify that such return and/or
 25 destruction has taken place.

26 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 27 **PROTECTED MATERIAL**

1 The production of information protected by the attorney-client privilege, work
2 product doctrine, or any other privilege or protection from disclosure is not a waiver
3 of the privilege or protection from discovery in this case or in any other federal or
4 state proceeding. If information is produced in discovery that is subject to a claim of
5 privilege or of protection as a trial-preparation material, the party making the claim
6 may notify any party that receiving such information of such claim and the basis for
7 it. After being notified, a Party must promptly return or destroy the specified
8 information and any copies it has and may not sequester, use or disclose the
9 information until the claim is resolved.

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other protection,
12 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
13 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
14 may be established in an e-discovery order that provides for production without
15 prior privilege review. Pursuant to Federal Rule of Evidence (“FRE”) 502(d) and
16 (e), insofar as the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work
18 product protection, the parties may incorporate their agreement in the Stipulated
19 Protective Order submitted to the Court.

20 If the Receiving Party receives documents, ESI, or other forms of information
21 from the Producing Party that, upon inspection or review, appear in any respect to
22 contain or constitute potentially privileged information, the Receiving Party shall
23 immediately stop review of such information, shall not distribute it further even
24 amongst the Party’s own case team except as strictly necessary to confirm the
25 privileged nature of its contents, promptly sequester the potentially privileged
26 information, and immediately identify the potentially privileged information to the
27 Producing Party.

1 The Receiving Party may object to the Producing Party's designation of
2 disclosed information as privileged material by providing written notice of such
3 objection within seven days of its receipt of a written demand for the return of the
4 disclosed privileged material. The Parties will strictly comply with Local Rules 37-1
5 and 37-2 in connection with any dispute regarding the designation of information as
6 privileged material. If the Parties are unable to resolve any such dispute, the issue
7 shall be resolved by the Court after an in camera review of the disclosed privileged
8 material. However, the Receiving Party agrees not to argue in connection with a
9 dispute over privileged material that the information may not have been reviewed by
10 the Producing Party prior to its disclosure or that the Producing Party did not take
11 reasonable steps to prevent disclosure. Pending resolution of any such dispute by the
12 Court, the Receiving Party shall not review and shall not use the disclosed privileged
13 material in any respect.

14 This Order shall be interpreted to provide the maximum protection allowed by
15 FRE 502(d). In addition, any document or information that is disclosed in accordance
16 with a court order pursuant to FRE 502(d) shall automatically be treated as
17 "CONFIDENTIAL" even if not expressly marked, unless the disclosing or Producing
18 Party affirmatively indicates that certain specified material is not
19 "CONFIDENTIAL." FRE 502(b) is inapplicable to any disclosed privileged material.
20 Under FRE 502(d) and 28 U.S. Code § 1738, this Order shall be enforceable and
21 granted full faith and credit in all other state and federal proceedings. Any subsequent
22 conflict of law analysis shall apply the law most protective of privilege and work
23 product.

24 Nothing contained herein is intended to or shall serve to limit a party's right
25 to conduct a review and segregation for withholding from production documents,
26 ESI or other information (including metadata) based on the lack of relevance or
27 responsiveness, or the existence of a privilege or other protection from disclosure.
28

1 **13. MISCELLANEOUS**

2 13.1. Right to Further Relief.

3 All Parties reserve the right to seek modification of this Order at
4 any time for good cause, including obtaining appropriate orders for
5 deponents who refuse to sign the attached Certification. The Parties
6 agree to meet and confer prior to seeking to modify this Order for any
7 reason. The restrictions imposed by this Order may only be modified
8 or terminated by written stipulation of all Parties or by order of the
9 Court. Nothing in this Stipulated Protective Order abridges the right
10 of any person to seek its modification by the Court in the future or to
11 petition the Court for a further protective order relating to any
12 purportedly confidential information. Nothing in this Order shall
13 prevent any Party from seeking additional Protective Orders or other
14 appropriate relief with respect to the scope of discovery and/or any
15 discovery requests, depositions, and/or portions thereof that such Party
16 believes to be inappropriate, harassing, or otherwise impermissible
17 under applicable law.

18 13.2. Right to Assert Other Objections.

19 By stipulating to the entry of this Stipulated Protective Order, no
20 Party waives any right it otherwise would have to object to disclosing
21 or producing any information or item on any ground not addressed in
22 this Stipulated Protective Order. Similarly, no Party waives any right to
23 object, on any ground, to use in evidence of any Protected Material.

24 13.3. Filing Protected Material.

25 Without written permission from the Designating Party or a court
26 order secured after appropriate notice to all interested persons, a Party
27 may not file in the public record in this action any Protected Material.
28 A Party that seeks to file under seal any Protected Material must

1 comply with Local Rule 79-5. Protected Material may only be filed
2 under seal pursuant to a court order authorizing the sealing of the
3 specific Protected Material at issue. If a Party's request to file Protected
4 Material under seal is denied by the Court, then the Receiving Party
5 may file the information in the public record unless otherwise
6 instructed by the Court.

7 **14. COMPLIANCE WITH ORDER**

8 A Party's compliance with the obligations imposed on it by this Order,
9 including any obligations concerning the treatment of information designated as
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
11 ONLY" shall not be deemed an admission by the complying Party or otherwise be
12 evidence that the information so designated is in fact confidential, proprietary, trade
13 secret, or private information. Nor shall such compliance be deemed a waiver of the
14 complying Party's right to challenge the Designating Party's designation of
15 Protected Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY."

17 **15. SURVIVAL OF OBLIGATIONS**

18 The Parties' obligations as to all Protected Material survive the termination
19 of the Action and remain subject to the terms of this Stipulated Protective Order.
20 As used in this subdivision, all "Protected Material" includes all copies, abstracts,
21 compilations summaries, or any other form of reproducing or capturing any of the
22 Protected Material.

23 Counsel are entitled to retain an archival copy of all pleadings, motion
24 papers, transcripts, legal memoranda, correspondence, or attorney work product,
25 even if such materials contain Protected Material. Any such archival copies that
26 contain or constitute Protected Material remain subject to the terms of this
27 Stipulated Protective Order.
28

1 Any violation of this Stipulated Order may be punished by any and all
2 appropriate measures including, without limitation, contempt proceedings and/or
3 monetary sanctions.

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

5 Dated: April 27, 2023

Respectfully submitted,

6 CLYDE & CO US LLP
7

8
9 By: /s/ Alison K. Beanum

10 Alison K. Beanum

11 Veena A. Mitchell

Kirsten Soto

12 Attorneys for Defendant

13 TREND HUNTER INC.

14 Dated: April 27, 2023

Respectfully submitted,

15 ONE LLP
16

17
18 By: /s/ Christopher S. Skinner

19 John Tehranian

20 Christopher S. Skinner

21 Attorneys for Plaintiff

AUGUST IMAGE, LLC

22 **Attestation Under L.R. 5-4.3.4(a)(2)(i)**

23 Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), I attest that all other signatories
24 listed, and on whose behalf the filing is submitted, concur in the filing's content, and
25 have authorized the filing.
26
27
28

1 By: /s/ Alison K. Beanum

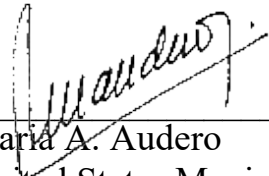
2 Alison K. Beanum

3 Attorney for Defendant

4 TREND HUNTER INC.

5
6
7 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

8
9 Dated: September 14, 2023

10 
Maria A. Audero

11 United States Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [full name], of _____
 _____ [address], declare under penalty of perjury that I have read in its
 entirety and understand the Stipulated Protective Order that was issued by the
 United States District Court for the Central District of California on _____
 [date] in the case of _____
 [case name and number]. I agree to comply with and to be bound by all the terms
 of this Stipulated Protective Order, and I understand and acknowledge that failure
 to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Stipulated
 Protective Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [full name]
 of _____ [address and telephone number]
 as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Signature: _____

Printed Name: _____

Date: _____

City and State Where Sworn and Signed: _____